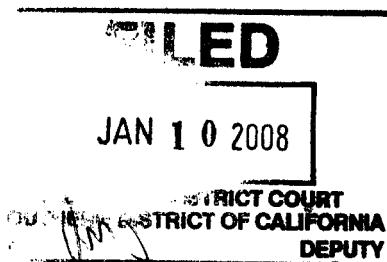


1 KAREN P. HEWITT
 2 United States Attorney
 3 W. Mark Conover
 4 Assistant United States Attorney
 5 California State Bar No. 236090
 6 United States Attorney's Office
 7 Federal Office Building
 8 880 Front Street, Room 6293
 9 San Diego, California 92101
 10 Telephone: (619) 557-5200



11 Attorneys for Plaintiff
 12 UNITED STATES OF AMERICA

13
 14 UNITED STATES DISTRICT COURT

15 SOUTHERN DISTRICT OF CALIFORNIA

16 *08CR73-JAH*

17 UNITED STATES OF AMERICA,) Magistrate Case No. 07MJ2959
 18 Plaintiff,)
 19 v.)
 20 ARIEL INFANTE,)
 21 Defendant.)
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____
 27 _____
 28 _____

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and W. Mark
 19 Conover, Assistant United States Attorney, and defendant ARIEL INFANTE, by and through and
 20 with the advice and consent of defense counsel, Carey Gorden, Federal Defenders of San Diego, Inc.,
 21 that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
 23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
 24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
 25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
 26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
 27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

28 //

WMC:jam:12/28/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **January 25, 2008**.

6 4. The material witness, David Eddin Hernandez-Mejia, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;
8 b. Entered or attempted to enter the United States illegally on or about
9 December 21, 2007;

10 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that he was an alien
12 with no lawful right to enter or remain in the United States;

13 d. Was paying \$2,500 to others to be brought into the United States illegally
14 and/or transported illegally to his destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to his country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Ariel Infante

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to his country of origin.

12 || It is STIPULATED AND AGREED this date.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

16 Dated: 1/10/08

Mark Conover
W. MARK CONOVER
Assistant United States Attorney

18 Dated: 112107

Carey Gorden
CAREY GOREN
Defense Counsel for Ariel Infante

21 Dated: 112107


Ariel Infante
Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Ariel Infante

ORDER

2 Upon joint application and motion of the parties, and for good cause shown,
3 **THE STIPULATION** is admitted into evidence, and,
4 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
5 forthwith to the Department of Homeland Security for return to his country of origin.

SO ORDERED.

Dated:

1/10/09

United States Magistrate Judge